

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

---

PETER MILLER, CLIFFORD HOYT, and  
CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.

Plaintiffs,

v.

PATRICK TREADO and CHEMIMAGE CORP.

Defendants.

---

Case No. 05-10367 RWZ

**DEFENDANTS' MOTION FOR A FOURTEEN-DAY EXTENSION OF TIME TO  
RESPOND TO PLAINTIFFS' MOTIONS (A) FOR LEAVE TO FILE  
AN AMENDED COMPLAINT AND (B) TO IMPOUND**

Defendants Patrick Treado and ChemImage Corp. respectfully move for a fourteen-day extension of time (to June 15, 2006) to file their responses to the plaintiffs' motions (a) for leave to file an amended complaint (docket entry 40) and (b) to impound (docket entry 42). The defendants require this additional time to analyze and determine how to respond to the plaintiffs' motions; their proposed 36-page, 10-count amended complaint; and the 34 exhibits appended thereto. The plaintiffs' proposed amended complaint advances a radically different and expanded case against the defendants, moving from a claim for correction of inventorship of a single patent to an alleged RICO conspiracy. Furthermore, although the plaintiffs failed to fulfill their Local Rule 7.1 conferral requirement before filing their motions, it appears that they took several months to prepare their motion papers and proposed amended complaint. The defendants' counsel asked the plaintiffs' counsel whether they would agree to the requested

extension of time, and the plaintiffs' counsel refused, agreeing instead only to an extension of two business days.

In further support of their motion, the defendants state as follows:

**1. The Additional Time Is Necessary To Enable The Defendants To Analyze And Determine How To Respond To The Plaintiffs' Motions:**

The plaintiffs filed their original complaint in this matter on February 24, 2005. That 12-page complaint asserted one count (Count 1) for correction of inventorship of United States Patent No. 6,734,962 (the "'962 patent"), and four other counts (Counts 2-5) alleging invalidity or unenforceability of the '962 patent and two pending patent applications. Faced with a motion to dismiss Counts 2-5 for lack of subject matter jurisdiction, the plaintiffs agreed in May 2005 to dismiss those counts without prejudice. In the year since, this case has proceeded on the discrete issue of inventorship of the '962 patent.

On May 18, 2006, without any notice or warning to the defendants, 7½ months after the deadline for filing motions to amend, and just 2½ months before the deadline for completion of fact discovery, the plaintiffs filed a motion for leave to amend their complaint. The proposed amended complaint stretches to 36 pages and asserts nine new counts, including eight common law and statutory counts alleging various forms of wrongdoing including breach of the implied covenant of good faith and fair dealing, unjust enrichment, fraud, breach of fiduciary duty, conversion, violation of G.L. c. 93A, civil conspiracy, and (last but not least) RICO. The plaintiffs also attached 34 exhibits to their proposed amended complaint. Further, the plaintiffs filed a motion to impound the brief supporting their motion for leave to amend and the proposed amended complaint itself.

The plaintiffs' proposed amended complaint would radically change the nature of this case. The defendants request a fourteen-day extension of time so that they may have adequate

time to analyze and determine how to respond to the plaintiffs' motion for leave to amend; their proposed 36-page, 10-count amended complaint; and the 34 exhibits appended thereto. Further, it appears from the motion to impound that the plaintiffs seek to have the Court take the extraordinary step of impounding a complaint in a civil case. The defendants request additional time to determine how to respond to that motion.

**2. The Plaintiffs Falsely Represented To The Court That They Had Fulfilled The Local Rule 7.1 Conferral Requirement Before Filing Their Motions:**

As noted above, the plaintiffs filed their motion for leave to amend and their motion to impound without any notice or warning to the defendants. The motion for leave to amend does contain, on the second page, a "Local Rule 7.1(A)(2) Certification," which states as follows: "Counsel for Plaintiffs certifies that counsel for plaintiffs has conferred with counsel for defendants in a good faith attempt to resolve or narrow the issue presented in this motion, as described in the accompanying memorandum." This certification is false.

It appears that the plaintiffs' counsel take the position that they satisfied the Local Rule 7.1 conferral requirement by virtue of an e-mail exchange between counsel in March 2006. See plaintiffs' brief in support of motion for leave to amend, at 2; and May 18, 2006 e-mail from plaintiffs' counsel (copy attached hereto as Exhibit A). However, the March 2006 e-mail exchange concerned the parties' negotiation of a proposed revised scheduling order, not the plaintiffs' planned filing of a motion for leave to amend.

Specifically, in February/early March 2006, the plaintiffs proposed a three-month extension of existing, future deadlines in the case for completion of fact discovery, expert discovery, etc. The defendants agreed to this proposal. On March 7, the plaintiffs' counsel forwarded to the defendants' counsel a draft joint motion to extend (copy of draft motion and covering e-mail attached hereto as Exhibit B). The draft motion included, without any

explanation from the plaintiffs, a proposed extension of the deadline for “joinder of parties/amendment of pleadings” from October 1, 2005 to June 1, 2006. See Exhibit B, third page. On March 10, the plaintiffs’ counsel provided comments on the draft motion, including that “[w]e see no reason for an extension of the deadline for joinder of parties and amendment of pleadings” (copy of March 10 e-mail attached hereto as Exhibit C). Later that same day, the plaintiffs’ counsel responded with a revised draft motion, from which they had simply deleted the reference to extending the deadline for amending pleadings, again without any comment or explanation (copy of March 10 e-mail and revised draft motion attached hereto as Exhibit D). The plaintiffs’ counsel made no further reference to any request for an extension of the long-past October 1, 2005 deadline for amending pleadings, and they never made any disclosure to the defendants or their counsel of their planned filing of a radically amended complaint.

**3. It Is Evident That The Plaintiffs Took Several Months To Prepare Their Motion Papers, Yet They Have Refused To Grant A Two-Week Extension To The Defendants For Response:**

Given the size and complexity of the plaintiffs’ motion papers and proposed amended complaint, it is fair to assume that the documents were in preparation for at least several weeks. Indeed, the plaintiffs’ position that the parties’ exchange of e-mails in early March constitutes conferral concerning the motion for leave to amend suggests that they have been working on these papers for more than two months.

On Wednesday May 24, 2006, counsel for the defendants called lead counsel for the plaintiffs to request a fourteen-day extension of time to respond to the motion for leave to amend. During that call, the plaintiffs’ lead counsel indicated that he would be inclined to grant the extension, but that he would need to confirm with his clients. On the morning of Thursday May 25, the plaintiffs’ counsel sent a letter to the defendants’ counsel stating as follows:

[W]e will not agree to extend the deadline for your response until June 15<sup>th</sup>. However, in light of the Memorial Day holiday, we will agree to extend the time for your opposition from June 1<sup>st</sup> until June 5<sup>th</sup>.

See Exhibit E hereto (letter dated May 25, 2006 from Attorney Theodor J. Holmberg to the undersigned). Needless to say, the proffered extension of two business days is neither adequate nor fair. The conduct of the plaintiffs (or their counsel) is surprising because in 2005, the defendants assented to the plaintiffs' request for eighteen additional days to respond to the defendants' considerably simpler motion to dismiss Counts 2-5 from the original complaint. See docket entries of May 11, 27 and 31, 2005.

WHEREFORE, the defendants respectfully request that the Court extend to June 15, 2006, the deadline for the defendants to respond to the plaintiffs' motions (a) for leave to file an amended complaint (docket entry 40) and (b) to impound (docket entry 42).

PATRICK TREADO AND CHEMIMAGE CORP.

By their attorneys,

/s/ Anthony J. Fitzpatrick

Anthony J. Fitzpatrick (BBO # 564324)

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May 26, 2006

**LOCAL RULE 7.1 CERTIFICATION**

Pursuant to 7.1(A)(2), the undersigned certifies that counsel for the defendants have conferred with counsel for plaintiffs regarding the issues raised in the foregoing motion. Counsel for plaintiffs have refused to grant the requested extension of time.

/s/ Anthony J. Fitzpatrick  
Anthony J. Fitzpatrick

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on May 26, 2006.

/s/ Anthony J. Fitzpatrick  
Anthony J. Fitzpatrick

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# **EXHIBIT A**

To

**Defendants' Motion for a Fourteen-Day  
Extension of Time to Respond to Plaintiffs'  
Motions (A) for Leave to File an Amended  
Complaint and (B) to Impound**

Dated: May 26, 2006

**Fitzpatrick, Anthony J.**

---

**From:** Tidge Holmberg [THolmberg@cplplaw.com]  
**Sent:** Thursday, May 18, 2006 6:50 PM  
**To:** Fitzpatrick, Anthony J.  
**Cc:** Martin B. Pavane; pweller@morganlewis.com; Nancy M. Gonsalves; Delphine Puybureau-Manaud  
**Subject:** RE: Miller, et al. v. Treado, et al.  
**Importance:** High

Mr. Fitzgerald:

The basis for our LR 7.1(a)(2) certification is explained in the redacted version of the memo electronically filed with the Court, to wit (p. 2):

Because no substantive discovery had taken place as of March of this year, plaintiffs and defendants jointly moved this Court to extend the deadlines in the scheduling order, which the Court granted on March 30, 2006. At the time, plaintiffs had asked defendants to agree to extend the deadline for amending the pleadings, inasmuch as all other scheduling deadlines were being extended, but defendants refused.

You will note that LR 7.1(a)(2) does not require that we confer "concerning the ***motion***", but rather that we confer "to resolve or narrow the ***issue***". When we proposed extending the amended pleading dateline, you responded in your e-mail of March 10, 2006: "We see no reason for an extension of the deadline for joinder of parties and amendment of pleadings, and will not agree to any such extension."

We would be happy to withdraw this motion, if you have changed your mind and would now agree to extending the deadline for amending the pleadings. Let us know if you would like to discuss this.

Please find the unredacted copies of the Memo in Support and the [Proposed] Amended Complaint attached. You will note that all of the exhibits are from the documents we have already produced to you, and are each identified both in the [Proposed] Amended Complaint and in the Index to the Motion to Impound by their bates numbers.

Best Regards,  
Tidge Holmberg

-----Original Message-----

**From:** Fitzpatrick, Anthony J. [mailto:AJFitzpatrick@duanemorris.com]  
**Sent:** Thursday, May 18, 2006 5:51 PM  
**To:** Tidge Holmberg  
**Cc:** Martin B. Pavane; pweller@morganlewis.com  
**Subject:** Miller, et al. v. Treado, et al.

Mr. Holmberg:

This afternoon, we learned (via the Court's ECF system) that the plaintiffs have filed (i) a motion to amend their complaint and (ii) a motion to impound related papers. We further understand, from your certificates of service, that unredacted copies of the motion papers are being served on counsel for the defendants only by regular mail. Given the likelihood that we will not receive those documents by mail until early next week, we request that a complete set of the unredacted motion papers be hand-delivered by your local Boston counsel to me today or no later than tomorrow morning.

Further, we note that the plaintiffs' Motion for Leave to File an Amended Complaint includes a Local Rule 7.1 (A)(2) Certification, certifying that counsel for plaintiffs' counsel have conferred with counsel for the defendants concerning the motion. Counsel for the defendants have not received any communication from plaintiffs' counsel regarding this motion. Accordingly, we ask that you explain the basis for this certification.

5/26/2006



Anthony J. Fitzpatrick  
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## **EXHIBIT B**

To

Defendants' Motion for a Fourteen-Day  
Extension of Time to Respond to Plaintiffs'  
Motions (A) for Leave to File an Amended  
Complaint and (B) to Impound

Dated: May 26, 2006

**Fitzpatrick, Anthony J.**

---

**From:** Tidge Holmberg [THolmberg@cplplaw.com]  
**Sent:** Tuesday, March 07, 2006 7:24 PM  
**To:** Fitzpatrick, Anthony J.; pweller@morganlewis.com  
**Cc:** Martin B. Pavane  
**Subject:** CRi et al. v. ChemImage et al. :: Draft Joint Motion to Extend Deadlines

**Importance:** High

**Attachments:** 525\_1.DOC



525\_1.DOC (45 KB)

Tony:

Here is a draft of the joint motion for extending the current deadlines. As we previously stated, we would like to file it before next week.

Tidge

<<525\_1.DOC>>

---

Teodor J. Holmberg  
Cohen, Pontani, Lieberman & Pavane  
551 Fifth Avenue  
New York, New York 10176  
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Fax: 212-972-5487

e-mail: tidge@cplplaw.com

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**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

PETER J. MILLER, an individual,  
CLIFFORD HOYT, an individual, and  
CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.,  
a Delaware corporation,

Plaintiffs,

v.

PATRICK TREADO, an individual, and  
CHEMIMAGE CORP., a Delaware  
corporation,

Defendants.

**Civil Action No. 05-10367-RWZ**

**JOINT MOTION TO AMEND  
SCHEDULING ORDER**

Counsel for plaintiffs Cambridge Research and Instrumentation, Inc., Peter J. Miller, and Clifford Hoyt (collectively, "CRI"), and counsel for defendants ChemImage Corporation and Patrick Treado (collectively, "ChemImage") jointly move to amend the October 28, 2005 Scheduling Order (Docket Entry, "D.E.", 28) for this case in order to provide sufficient time to complete discovery, which has just started, before trial. In most cases, the amendments would result in a 90 day extension.

Specifically, the parties request the following amendments:

<b>Event</b>	<b>Previously Scheduled Dates</b>	<b>Proposed Dates</b>
Joinder of Parties/Amendment of Pleadings	October 1, 2005	June 1, 2006
Completion of fact discovery: deadline for: - completion of non-expert depositions - responses to all discovery requests	May 1, 2006	August 1, 2006
Identification of Experts (FRCP 26(a)(2)(A))	May 15, 2006	August 15, 2006
Opening Expert Reports - i.e., for which the party has the burden of proof (FRCP 26(a)(2)(B))	June 15, 2006	September 15, 2006
Rebuttal Expert Reports (FRCP 26(a)(2)(B))	July 15, 2006	October 15, 2006
Completion of Expert Depositions	August 15, 2006	November 15, 2006
Exchange proposed claim constructions	n/a	December 1, 2006
Submit joint statement on claim construction	n/a	December 15, 2006
File memoranda in support of any disputed claim terms	n/a	January 10, 2007
File opposition to claim construction memoranda	n/a	January 24, 2007
Filing and service of Motions for Summary Judgment	September 15, 2006	February 1, 2007
Filing and service of oppositions to Motions for Summary Judgment	October 6, 2006	February 22, 2007
Filing and service of replies to oppositions (5 page limit)	October 13, 2006	March 1, 2007
Define the issues by	October 13, 2006	March 5, 2007

**PETER J. MILLER,  
CLIFFORD HOYT, and  
CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.**

By their attorneys,

/s/ Teodor Holmberg  
Martin B. Pavane  
Teodor J. Holmberg (BBO #634708)  
Cohen, Pontani, Lieberman, and Pavane  
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New York, NY 10176  
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**PATRICK TREADO, and  
CHEMIMAGE CORPORATION**

By their attorneys,

/s/ Anthony J. Fitzpatrick  
Anthony J. Fitzpatrick (BBO #564324)  
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470 Atlantic Avenue, Suite 500  
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eFax (215) 963-5001

DATED: May 26, 2006

525\_1.DOC

## **EXHIBIT C**

To

**Defendants' Motion for a Fourteen-Day  
Extension of Time to Respond to Plaintiffs'  
Motions (A) for Leave to File an Amended  
Complaint and (B) to Impound**

Dated: May 26, 2006

**Fitzpatrick, Anthony J.**

---

**From:** Fitzpatrick, Anthony J.  
**Sent:** Friday, March 10, 2006 4:21 PM  
**To:** 'Tidge Holmberg'  
**Cc:** 'Martin B. Pavane'; 'pweller@morganlewis.com'  
**Subject:** RE: CRI et al. v. ChemImage et al. :: Draft Joint Motion to Extend Deadlines

Tidge:

Thank you for drafting the motion for extension of time. However, we are somewhat dismayed that your draft goes far beyond the parties' agreement (which your clients proposed), namely to move existing, future deadlines back three months.

1. We see no reason for an extension of the deadline for joinder of parties and amendment of pleadings, and will not agree to any such extension.
2. Similarly, we do not see a reason for the insertion of a separate claim construction briefing schedule after discovery and before summary judgment briefing. Judge Zobel did not contemplate or provide for such briefing in her scheduling order, and we believe that it would be redundant in view of the summary judgment briefing. Thus, again, we will not agree to such a schedule. Instead, we would agree to move each summary judgment deadline back 3 months.
3. We do not understand what is meant by your final entry, "define issues by." Please clarify.

Tony

Anthony J. Fitzpatrick  
Duane Morris LLP  
470 Atlantic Avenue, Suite 500  
Boston, MA 02210  
617-289-9220 (phone)  
617-289-9201 (fax)  
ajfitzpatrick@duanemorris.com

-----Original Message-----

**From:** Tidge Holmberg [mailto:THolmberg@cplplaw.com]  
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**To:** Fitzpatrick, Anthony J.; pweller@morganlewis.com  
**Cc:** Martin B. Pavane  
**Subject:** CRI et al. v. ChemImage et al. :: Draft Joint Motion to Extend Deadlines  
**Importance:** High

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Here is a draft of the joint motion for extending the current deadlines. As we previously stated, we would like to file it before next week.

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Teodor J. Holmberg



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New York, New York 10176  
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## **EXHIBIT D**

To

Defendants' Motion for a Fourteen-Day  
Extension of Time to Respond to Plaintiffs'  
Motions (A) for Leave to File an Amended  
Complaint and (B) to Impound

Dated: May 26, 2006

**Fitzpatrick, Anthony J.**

---

**From:** Tidge Holmberg [THolmberg@cplplaw.com]  
**Sent:** Friday, March 10, 2006 6:28 PM  
**To:** Fitzpatrick, Anthony J.  
**Cc:** Martin B. Pavane; pweller@morganlewis.com; Raymond Torres  
**Subject:** RE: CRI et al. v. ChemImage et al. :: Draft Joint Motion to Extend Deadlines

**Importance:** High  
**Sensitivity:** Confidential

**Attachments:** DRAFT Scheduling Order.pdf; DRAFT Motion to Modify the Scheduling Order.pdf



DRAFT Scheduling  
Order.pdf (6 ...



DRAFT Motion to  
Modify the Sch...

Tony:

Please see attached revised motion, with all of the sections you discuss removed, and the corresponding order. We made the filing of oppositions to summary judgment motions January 12, 2007 rather than January 6, 2007, to take into account the holiday season. We don't understand "define issues by" either; it was in the Judge's October 28, 2005 Scheduling Order. We've removed it from the proposed schedule.

It is our assumption that, because this is a joint motion, a memorandum is unnecessary. Do you agree?

Please provide your assent to filing by this Monday (13 March 2006) as we would like to file it on that day.

Tidge

-----Original Message-----

**From:** Fitzpatrick, Anthony J. [mailto:AJFitzpatrick@duanemorris.com]  
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**Cc:** Martin B. Pavane; pweller@morganlewis.com  
**Subject:** RE: CRI et al. v. ChemImage et al. :: Draft Joint Motion to Extend Deadlines

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1. We see no reason for an extension of the deadline for joinder of parties and amendment of pleadings, and will not agree to any such extension.

2. Similarly, we do not see a reason for the insertion of a separate claim construction briefing schedule after discovery and before summary judgment briefing. Judge Zobel did not contemplate or provide for such briefing in her scheduling order, and we believe that it would be redundant in view of the summary judgment briefing. Thus, again, we will not agree to such a schedule. Instead, we would agree to move each summary judgment deadline back 3 months.

3. We do not understand what is meant by your final entry, "define issues by." Please clarify.

Tony

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Sent: Tuesday, March 07, 2006 7:24 PM  
To: Fitzpatrick, Anthony J.; pweller@morganlewis.com  
Cc: Martin B. Pavane  
Subject: CRi et al. v. ChemImage et al. :: Draft Joint Motion to Extend Deadlines  
Importance: High

Tony:

Here is a draft of the joint motion for extending the current deadlines. As we previously stated, we would like to file it before next week.  
Tidge

<<525\_1.DOC>>

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Teodor J. Holmberg  
Cohen, Pontani, Lieberman & Pavane  
551 Fifth Avenue  
New York, New York 10176  
Phone: 212-687-2770  
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CONFIDENTIALITY NOTICE

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**IN THE UNITED STATES DISTRICT COURT FOR THE  
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PETER J. MILLER, an individual,  
CLIFFORD HOYT, an individual, and  
CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.,  
a Delaware corporation,

Plaintiffs,

v.

PATRICK TREADO, an individual, and  
CHEMIMAGE CORP., a Delaware  
corporation,

Defendants.

**Civil Action No. 05-10367-RWZ**

**JOINT MOTION TO AMEND  
SCHEDULING ORDER**

Counsel for plaintiffs Cambridge Research and Instrumentation, Inc., Peter J. Miller, and Clifford Hoyt (collectively, "CRI"), and counsel for defendants ChemImage Corporation and Patrick Treado (collectively, "ChemImage") jointly move to amend the October 28, 2005 Scheduling Order [Docket Entry, "D.E.", 28] for this case in order to provide sufficient time to complete discovery. The amendments will result in moving each deadline forward by ninety days. The proposed scheduling order is attached (**Exhibit A**).

Specifically, the parties request the following amendments:

Joint Motion  
To Amend Scheduling Order

Event	Previously Scheduled Dates	Proposed Dates
Completion of fact discovery: deadline for: - completion of non-expert depositions - responses to all discovery requests	May 1, 2006	August 1, 2006
Identification of Experts (FRCP 26(a)(2)(A))	May 15, 2006	August 15, 2006
Opening Expert Reports - i.e., for which the party has the burden of proof (FRCP 26(a)(2)(B))	June 15, 2006	September 15, 2006
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Filing and service of oppositions to Motions for Summary Judgment	October 6, 2006	January 12, 2007
Filing and service of replies to oppositions (5 page limit)	October 13, 2006	January 19, 2007

Respectfully submitted,

**PETER J. MILLER,  
CLIFFORD HOYT, and  
CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.**

By their attorneys,

/s/ Teodor Holmberg  
Martin B. Pavane (admitted pro hac vice)  
Teodor J. Holmberg (BBO #634708)  
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**PATRICK TREADO, and  
CHEMIMAGE CORPORATION**

By their attorneys,

/s/ Anthony J. Fitzpatrick  
Anthony J. Fitzpatrick (BBO #564324)  
Duane Morris LLP  
470 Atlantic Avenue, Suite 500  
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e-mail: [ajfitzpatrick@duanemorris.com](mailto:ajfitzpatrick@duanemorris.com)

Joint Motion  
To Amend Scheduling Order

Brian L. Michaelis (BBO# 555159)  
Erin E. McLaughlin (BBO# 647750)  
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Philadelphia, PA 19103  
Tel. (215) 963-5530  
eFax (215) 963-5001

DATED: March 10, 2006

525\_1.DOC



Joint Motion  
To Amend Scheduling Order

**LOCAL RULE 7.1(A)(2) CERTIFICATION**

Counsel for Plaintiffs certifies that counsel for plaintiffs has conferred with counsel for defendants in a good faith attempt to resolve or narrow the issue presented in this motion, and that counsel for defendants agrees with the requested relief.

/s/ Teodor Holmberg  
Teodor J. Holmberg (BBO# 634708)

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and a copy will be e-mailed to those indicated as non-registered participants on March 10, 2006.

/s/ Teodor Holmberg  
Teodor J. Holmberg (BBO# 634708)

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

PETER J. MILLER, an individual,  
CLIFFORD HOYT, an individual, and  
CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.,  
a Delaware corporation,

Plaintiffs,

v.

PATRICK TREADO, an individual, and  
CHEMIMAGE CORP., a Delaware  
corporation,

Defendants.

**Civil Action No. 05-10367-RWZ**

**[PROPOSED] AMENDED SCHEDULING ORDER**

It is hereby ordered that the following schedule will replace and supersede the Court's October 28, 2005 Scheduling Order [Docket Entry, "D.E.", 28]:

<b>Event</b>	<b>Dates</b>
Completion of fact discovery: deadline for: - completion of non-expert depositions - responses to all discovery requests	August 1, 2006
Identification of Experts (FRCP 26(a)(2)(A))	August 15, 2006
Opening Expert Reports - i.e., for which the party has the burden of proof (FRCP 26(a)(2)(B))	September 15, 2006
Rebuttal Expert Reports (FRCP 26(a)(2)(B))	October 15, 2006
Completion of Expert Depositions	November 15, 2006
Filing and service of Motions for Summary Judgment	December 15, 2006
Filing and service of oppositions to Motions for Summary Judgment	January 12, 2007
Filing and service of replies to oppositions (5 page limit)	January 19, 2007

Dated: \_\_\_\_\_, 2006

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RYA W. ZOBEL  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT E**

To

Defendants' Motion for a Fourteen-Day  
Extension of Time to Respond to Plaintiffs'  
Motions (A) for Leave to File an Amended  
Complaint and (B) to Impound

Dated: May 26, 2006



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May 25, 2006

**VIA E-MAIL (CONFIRMATION BY MAIL)**

Anthony J. Fitzpatrick, Esq.  
Duane Morris LLP  
470 Atlantic Avenue, Suite 500  
Boston, MA 02210

Re: Extension of time to file Defendants' Opposition to  
Plaintiffs' Motion for leave to file an Amended Complaint in  
Cambridge Research & Instrumentation, Inc., Peter J. Miller  
and Clifford Hoyt v. ChemImage Corporation and Patrick Treado  
Civ. No. 05-10367-RWZ (D.Mass.)  
Our File No.: 34250-60L

Dear Mr. Fitzpatrick:

Concerning your telephone call to Martin Pavane yesterday, in which you asked for an extension of time to reply to our motion for leave to file an amended complaint [D.E. 40], we will not agree to extend the deadline for your response until June 15<sup>th</sup>. However, in light of the Memorial Day holiday, we will agree to extend the time for your opposition from June 1<sup>st</sup> until June 5<sup>th</sup>.

Very truly yours,  
COHEN, PONTANI, LIEBERMAN & PAVANE

Teodor J. Holmberg

MBP/TJH/tdg

cc: Paul D. Weller, Esq.